IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 159 OF 2005

Santosh Refreshments & anr. ... Appellants.
Versus.
M/s.Economy Refrigeration Ltd.& ors. ... Respondents.

Shri Diwakar Dwivdei for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 14th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellant. The order impugned is dated 20th November 2002 which reads thus:

> "Plaintiff and Advocate are present.
>
> His argument is heard.
>
> Defendant and Advocate are absent. His reply is taken on record. Original notice is not on record. Kept back.
>
> Later on. Plaintiff present. He is not aware about the original notice of motion hence no order. Record and proceedings be sent to the Record Department."

The learned Counsel for the Appellant submitted that by the impugned order the Notice of Motion No.4851 of 2002 taken out by the Appellant/original Plaintiff has been

dismissed. The said Notice of Motion is for setting aside exparte decree passed in Summary Suit No.8000 of 1999. The learned Counsel for the Appellants submitted that in fact the Appellants and their Advocate were present when the order dated 20th November 2002 was passed and the Advocate for the Plaintiffs and the Plaintiffs were not present. He submits that there is an error in recording the Rojnama.

2. If there is an error in the proceedings of the Court it is for the Appellants to apply the concerned Court for rectification of the error. More over from the order it appears that the Notice of Motion No.4851 of 2003 is not dismissed. In fact the order records that reply to the Notice of Motion is taken on record. Thought the order does not indicate that the Notice of Motion is disposed of, if it is disposed of, it is open for the Appellants to apply to the trial Court.

3. In view of this position, after arguing the appeal for sometime, the learned Counsel for the Appellants prayed that he may be permitted to withdraw the appeal with liberty to take out appropriate proceedings before the trial Court for seeking appropriate reliefs. The said request is reasonable.

4. Accordingly the Appeal from Order is allowed to be withdrawn with liberty as prayed. No order as to costs.

5. All contentions on merits are kept open.

6. Parties and the concerned Court to act on an authenticated copy of this order.

Judge.